
BILL REQUEST - CODE REVISER'S OFFICE

BILL REQ. #: Z-0054.2/11 2nd draft

ATTY/TYPIST: ML:crs

BRIEF DESCRIPTION: Concerning provisions for notifications and
appeals timelines under the shoreline management
act.

1 AN ACT Relating to provisions for notifications and appeals
2 timelines under the shoreline management act; amending RCW 36.70A.290,
3 90.58.090, 90.58.140, and 90.58.180; and reenacting and amending RCW
4 90.58.190.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 **Sec. 1.** RCW 36.70A.290 and 2010 c 211 s 8 are each amended to read
7 as follows:

8 (1) All requests for review to the growth management hearings board
9 shall be initiated by filing a petition that includes a detailed
10 statement of issues presented for resolution by the board. The board
11 shall render written decisions articulating the basis for its holdings.
12 The board shall not issue advisory opinions on issues not presented to
13 the board in the statement of issues, as modified by any prehearing
14 order.

15 (2) All petitions relating to whether or not an adopted
16 comprehensive plan, development regulation, or permanent amendment
17 thereto, is in compliance with the goals and requirements of this
18 chapter or chapter 90.58 or 43.21C RCW must be filed within sixty days

1 after publication (~~((by the legislative bodies of the county or city))~~)
2 as provided in (a) through (c) of this subsection.

3 (a) Except as provided in (c) of this subsection, the date of
4 publication for a city shall be the date the city publishes the
5 ordinance, or summary of the ordinance, adopting the comprehensive plan
6 or development regulations, or amendment thereto, as is required to be
7 published.

8 (b) Promptly after adoption, a county shall publish a notice that
9 it has adopted the comprehensive plan or development regulations, or
10 amendment thereto.

11 Except as provided in (c) of this subsection, for purposes of this
12 section the date of publication for a county shall be the date the
13 county publishes the notice that it has adopted the comprehensive plan
14 or development regulations, or amendment thereto.

15 (c) For local governments planning under RCW 36.70A.040, promptly
16 after approval or disapproval of a local government's shoreline master
17 program or amendment thereto by the department of ecology as provided
18 in RCW 90.58.090, the (~~((local government))~~) department of ecology shall
19 publish a notice that the shoreline master program or amendment thereto
20 has been approved or disapproved (~~((by the department of ecology))~~). For
21 purposes of this section, the date of publication for the adoption or
22 amendment of a shoreline master program is the date the (~~((local~~
23 ~~government))~~) department of ecology publishes notice that the shoreline
24 master program or amendment thereto has been approved or disapproved
25 (~~((by the department of ecology))~~).

26 (3) Unless the board dismisses the petition as frivolous or finds
27 that the person filing the petition lacks standing, or the parties have
28 filed an agreement to have the case heard in superior court as provided
29 in RCW 36.70A.295, the board shall, within ten days of receipt of the
30 petition, set a time for hearing the matter.

31 (4) The board shall base its decision on the record developed by
32 the city, county, or the state and supplemented with additional
33 evidence if the board determines that such additional evidence would be
34 necessary or of substantial assistance to the board in reaching its
35 decision.

36 (5) The board, shall consolidate, when appropriate, all petitions
37 involving the review of the same comprehensive plan or the same
38 development regulation or regulations.

1 **Sec. 2.** RCW 90.58.090 and 2003 c 321 s 3 are each amended to read
2 as follows:

3 (1) A master program, segment of a master program, or an amendment
4 to a master program shall become effective when approved by the
5 department as provided in subsection (7) of this section. Within the
6 time period provided in RCW 90.58.080, each local government shall have
7 submitted a master program, either totally or by segments, for all
8 shorelines of the state within its jurisdiction to the department for
9 review and approval.

10 (2) Upon receipt of a proposed master program or amendment, the
11 department shall:

12 (a) Provide notice to and opportunity for written comment by all
13 interested parties of record as a part of the local government review
14 process for the proposal and to all persons, groups, and agencies that
15 have requested in writing notice of proposed master programs or
16 amendments generally or for a specific area, subject matter, or issue.
17 The comment period shall be at least thirty days, unless the department
18 determines that the level of complexity or controversy involved
19 supports a shorter period;

20 (b) In the department's discretion, conduct a public hearing during
21 the thirty-day comment period in the jurisdiction proposing the master
22 program or amendment;

23 (c) Within fifteen days after the close of public comment, request
24 the local government to review the issues identified by the public,
25 interested parties, groups, and agencies and provide a written response
26 as to how the proposal addresses the identified issues;

27 (d) Within thirty days after receipt of the local government
28 response pursuant to (c) of this subsection, make written findings and
29 conclusions regarding the consistency of the proposal with the policy
30 of RCW 90.58.020 and the applicable guidelines, provide a response to
31 the issues identified in (c) of this subsection, and either approve the
32 proposal as submitted, recommend specific changes necessary to make the
33 proposal approvable, or deny approval of the proposal in those
34 instances where no alteration of the proposal appears likely to be
35 consistent with the policy of RCW 90.58.020 and the applicable
36 guidelines. The written findings and conclusions shall be provided to
37 the local government, and made available to all interested persons,
38 parties, groups, and agencies of record on the proposal;

(e) If the department recommends changes to the proposed master program or amendment, within thirty days after the department mails the written findings and conclusions to the local government, the local government may:

(i) Agree to the proposed changes(~~((The receipt by the department of the written notice of agreement constitutes final action by the department approving the amendment))~~) by written notice to the department; or

(ii) Submit an alternative proposal. If, in the opinion of the department, the alternative is consistent with the purpose and intent of the changes originally submitted by the department and with this chapter it shall approve the changes and provide ((written)) notice to all recipients of the written findings and conclusions. If the department determines the proposal is not consistent with the purpose and intent of the changes proposed by the department, the department may resubmit the proposal for public and agency review pursuant to this section or reject the proposal.

(3) The department shall approve the segment of a master program relating to shorelines unless it determines that the submitted segments are not consistent with the policy of RCW 90.58.020 and the applicable guidelines.

(4) The department shall approve the segment of a master program relating to critical areas as defined by RCW 36.70A.030(5) provided the master program segment is consistent with RCW 90.58.020 and applicable shoreline guidelines, and if the segment provides a level of protection of critical areas at least equal to that provided by the local government's critical areas ordinances adopted and thereafter amended pursuant to RCW 36.70A.060(2).

(5) The department shall approve those segments of the master program relating to shorelines of statewide significance only after determining the program provides the optimum implementation of the policy of this chapter to satisfy the statewide interest. If the department does not approve a segment of a local government master program relating to a shoreline of statewide significance, the department may develop and by rule adopt an alternative to the local government's proposal.

(6) In the event a local government has not complied with the requirements of RCW 90.58.070 it may thereafter upon written notice to

1 the department elect to adopt a master program for the shorelines
2 within its jurisdiction, in which event it shall comply with the
3 provisions established by this chapter for the adoption of a master
4 program for such shorelines.

5 Upon approval of such master program by the department it shall
6 supersede such master program as may have been adopted by the
7 department for such shorelines.

8 (7) A master program or amendment to a master program takes effect
9 when and in such form as approved or adopted by the department. The
10 effective date is the date of the department's written notice of final
11 action to the local government stating the department has approved or
12 rejected the proposal. For master programs adopted by rule, the
13 effective date is governed by RCW 34.05.380. The department's written
14 notice to the local government must conspicuously and plainly state
15 that it is the department's final decision and that there will be no
16 further modifications to the proposal.

17 (a) Shoreline master programs that were adopted by the department
18 prior to July 22, 1995, in accordance with the provisions of this
19 section then in effect, shall be deemed approved by the department in
20 accordance with the provisions of this section that became effective on
21 that date.

22 (b) The department shall maintain a record of each master program,
23 the action taken on any proposal for adoption or amendment of the
24 master program, and any appeal of the department's action. The
25 department's approved document of record constitutes the official
26 master program.

27 (8) Promptly after approval or disapproval of a local government's
28 shoreline master program or amendment, the department shall publish a
29 notice consistent with RCW 36.70A.290 that the shoreline master program
30 or amendment has been approved or disapproved. This notice must be
31 filed for all shoreline master programs or amendments, including local
32 governments not planning under RCW 36.70A.040.

33 **Sec. 3.** RCW 90.58.140 and 2010 c 210 s 36 are each amended to read
34 as follows:

35 (1) A development shall not be undertaken on the shorelines of the
36 state unless it is consistent with the policy of this chapter and,

1 after adoption or approval, as appropriate, the applicable guidelines,
2 rules, or master program.

3 (2) A substantial development shall not be undertaken on shorelines
4 of the state without first obtaining a permit from the government
5 entity having administrative jurisdiction under this chapter.

6 A permit shall be granted:

7 (a) From June 1, 1971, until such time as an applicable master
8 program has become effective, only when the development proposed is
9 consistent with: (i) The policy of RCW 90.58.020; and (ii) after their
10 adoption, the guidelines and rules of the department; and (iii) so far
11 as can be ascertained, the master program being developed for the area;

12 (b) After adoption or approval, as appropriate, by the department
13 of an applicable master program, only when the development proposed is
14 consistent with the applicable master program and this chapter.

15 (3) The local government shall establish a program, consistent with
16 rules adopted by the department, for the administration and enforcement
17 of the permit system provided in this section. The administration of
18 the system so established shall be performed exclusively by the local
19 government.

20 (4) Except as otherwise specifically provided in subsection (11) of
21 this section, the local government shall require notification of the
22 public of all applications for permits governed by any permit system
23 established pursuant to subsection (3) of this section by ensuring that
24 notice of the application is given by at least one of the following
25 methods:

26 (a) Mailing of the notice to the latest recorded real property
27 owners as shown by the records of the county assessor within at least
28 three hundred feet of the boundary of the property upon which the
29 substantial development is proposed;

30 (b) Posting of the notice in a conspicuous manner on the property
31 upon which the project is to be constructed; or

32 (c) Any other manner deemed appropriate by local authorities to
33 accomplish the objectives of reasonable notice to adjacent landowners
34 and the public.

35 The notices shall include a statement that any person desiring to
36 submit written comments concerning an application, or desiring to
37 receive notification of the final decision concerning an application as
38 expeditiously as possible after the issuance of the decision, may

1 submit the comments or requests for decisions to the local government
2 within thirty days of the last date the notice is to be published
3 pursuant to this subsection. The local government shall forward, in a
4 timely manner following the issuance of a decision, a copy of the
5 decision to each person who submits a request for the decision.

6 If a hearing is to be held on an application, notices of such a
7 hearing shall include a statement that any person may submit oral or
8 written comments on an application at the hearing.

9 (5) The system shall include provisions to assure that construction
10 pursuant to a permit will not begin or be authorized until twenty-one
11 days from the date ((~~of receipt~~)) the permit decision was filed as
12 provided in subsection (6) of this section; or until all review
13 proceedings are terminated if the proceedings were initiated within
14 twenty-one days from the date of ((~~receipt~~)) filing as defined in
15 subsection (6) of this section except as follows:

16 (a) In the case of any permit issued to the state of Washington,
17 department of transportation, for the construction and modification of
18 SR 90 (I-90) on or adjacent to Lake Washington, the construction may
19 begin after thirty days from the date of filing, and the permits are
20 valid until December 31, 1995;

21 (b) Construction may be commenced no sooner than thirty days after
22 the date of the appeal of the board's decision is filed if a permit is
23 granted by the local government and (i) the granting of the permit is
24 appealed to the shorelines hearings board within twenty-one days of the
25 date of ((~~receipt~~)) filing, (ii) the hearings board approves the
26 granting of the permit by the local government or approves a portion of
27 the substantial development for which the local government issued the
28 permit, and (iii) an appeal for judicial review of the hearings board
29 decision is filed pursuant to chapter 34.05 RCW. The appellant may
30 request, within ten days of the filing of the appeal with the court, a
31 hearing before the court to determine whether construction pursuant to
32 the permit approved by the hearings board or to a revised permit issued
33 pursuant to the order of the hearings board should not commence. If,
34 at the conclusion of the hearing, the court finds that construction
35 pursuant to such a permit would involve a significant, irreversible
36 damaging of the environment, the court shall prohibit the permittee
37 from commencing the construction pursuant to the approved or revised
38 permit until all review proceedings are final. Construction pursuant

1 to a permit revised at the direction of the hearings board may begin
2 only on that portion of the substantial development for which the local
3 government had originally issued the permit, and construction pursuant
4 to such a revised permit on other portions of the substantial
5 development may not begin until after all review proceedings are
6 terminated. In such a hearing before the court, the burden of proving
7 whether the construction may involve significant irreversible damage to
8 the environment and demonstrating whether such construction would or
9 would not be appropriate is on the appellant;

10 (c) If the permit is for a substantial development meeting the
11 requirements of subsection (11) of this section, construction pursuant
12 to that permit may not begin or be authorized until twenty-one days
13 from the date ~~((of receipt))~~ the permit decision was filed as provided
14 in subsection (6) of this section.

15 If a permittee begins construction pursuant to ~~((subsections))~~ (a),
16 (b), or (c) of this subsection, the construction is begun at the
17 permittee's own risk. If, as a result of judicial review, the courts
18 order the removal of any portion of the construction or the restoration
19 of any portion of the environment involved or require the alteration of
20 any portion of a substantial development constructed pursuant to a
21 permit, the permittee is barred from recovering damages or costs
22 involved in adhering to such requirements from the local government
23 that granted the permit, the hearings board, or any appellant or
24 intervener.

25 (6) Any decision on an application for a permit under the authority
26 of this section, whether it is an approval or a denial, shall,
27 concurrently with the transmittal of the ruling to the applicant, be
28 ~~((transmitted to))~~ filed with the department and the attorney general.
29 A petition for review of such a decision must be commenced within
30 twenty-one days from the date of ~~((receipt))~~ filing of the decision.

31 (a) With regard to a permit other than a permit governed by
32 subsection (10) of this section, "date of ~~((receipt" as used herein~~
33 ~~refers to the date that the applicant receives written notice from the~~
34 ~~department that the department has received the decision. With regard~~
35 ~~to a permit for a variance or a conditional use, "date of receipt"~~
36 ~~means the date a local government or applicant receives the written~~
37 ~~decision of the department rendered on the permit pursuant to~~
38 ~~subsection (10) of this section. For the purposes of this subsection,~~

1 ~~the term "date of receipt" has the same meaning as provided in RCW~~
2 ~~43.21B.001))~~ filing" as used in this section refers to the date of
3 actual receipt by the department of the local government's decision.

4 (b) With regard to a permit for a variance or a conditional use
5 governed by subsection (10) of this section, "date of filing" means the
6 date the decision of the department is transmitted by the department to
7 the local government.

8 (c) When a local government simultaneously transmits to the
9 department its decision on a shoreline substantial development with its
10 approval of either a shoreline conditional use permit or variance, or
11 both, "date of filing" has the same meaning as defined in (b) of this
12 subsection.

13 (d) The department shall notify in writing the local government and
14 the applicant of the date of filing.

15 (7) Applicants for permits under this section have the burden of
16 proving that a proposed substantial development is consistent with the
17 criteria that must be met before a permit is granted. In any review of
18 the granting or denial of an application for a permit as provided in
19 RCW 90.58.180 (1) and (2), the person requesting the review has the
20 burden of proof.

21 (8) Any permit may, after a hearing with adequate notice to the
22 permittee and the public, be rescinded by the issuing authority upon
23 the finding that a permittee has not complied with conditions of a
24 permit. If the department is of the opinion that noncompliance exists,
25 the department shall provide written notice to the local government and
26 the permittee. If the department is of the opinion that the
27 noncompliance continues to exist thirty days after the date of the
28 notice, and the local government has taken no action to rescind the
29 permit, the department may petition the hearings board for a rescission
30 of the permit upon written notice of the petition to the local
31 government and the permittee if the request by the department is made
32 to the hearings board within fifteen days of the termination of the
33 thirty-day notice to the local government.

34 (9) The holder of a certification from the governor pursuant to
35 chapter 80.50 RCW shall not be required to obtain a permit under this
36 section.

37 (10) Any permit for a variance or a conditional use issued with

1 approval by a local government under their approved master program((s))
2 must be submitted to the department for its approval or disapproval.

3 (11)(a) An application for a substantial development permit for a
4 limited utility extension or for the construction of a bulkhead or
5 other measures to protect a single family residence and its appurtenant
6 structures from shoreline erosion shall be subject to the following
7 procedures:

8 (i) The public comment period under subsection (4) of this section
9 shall be twenty days. The notice provided under subsection (4) of this
10 section shall state the manner in which the public may obtain a copy of
11 the local government decision on the application no later than two days
12 following its issuance;

13 (ii) The local government shall issue its decision to grant or deny
14 the permit within twenty-one days of the last day of the comment period
15 specified in (a)(i) of this subsection; and

16 (iii) If there is an appeal of the decision to grant or deny the
17 permit to the local government legislative authority, the appeal shall
18 be finally determined by the legislative authority within thirty days.

19 (b) For purposes of this section, a limited utility extension means
20 the extension of a utility service that:

21 (i) Is categorically exempt under chapter 43.21C RCW for one or
22 more of the following: Natural gas, electricity, telephone, water, or
23 sewer;

24 (ii) Will serve an existing use in compliance with this chapter;
25 and

26 (iii) Will not extend more than twenty-five hundred linear feet
27 within the shorelines of the state.

28 **Sec. 4.** RCW 90.58.180 and 2010 c 210 s 37 are each amended to read
29 as follows:

30 (1) Any person aggrieved by the granting, denying, or rescinding of
31 a permit on shorelines of the state pursuant to RCW 90.58.140 may(~~(~~
32 ~~except as otherwise provided in chapter 43.21L RCW,~~~~)~~) seek review from
33 the shorelines hearings board by filing a petition for review within
34 twenty-one days of the date of ((~~receipt~~)) filing of the decision as
35 ((~~provided for~~)) defined in RCW 90.58.140(6).

36 Within seven days of the filing of any petition for review with the
37 board as provided in this section pertaining to a final decision of a

1 local government, the petitioner shall serve copies of the petition on
2 the department, the office of the attorney general, and the local
3 government. The department and the attorney general may intervene to
4 protect the public interest and ensure that the provisions of this
5 chapter are complied with at any time within fifteen days from the date
6 of the receipt by the department or the attorney general of a copy of
7 the petition for review filed pursuant to this section. The shorelines
8 hearings board shall schedule review proceedings on the petition for
9 review without regard as to whether the period for the department or
10 the attorney general to intervene has or has not expired.

11 (2) The department or the attorney general may obtain review of any
12 final decision granting a permit, or granting or denying an application
13 for a permit issued by a local government by filing a written petition
14 with the shorelines hearings board and the appropriate local government
15 within twenty-one days from the date (~~(of receipt)~~) the final decision
16 was filed as provided in RCW 90.58.140(6).

17 (3) The review proceedings authorized in subsections (1) and (2) of
18 this section are subject to the provisions of chapter 34.05 RCW
19 pertaining to procedures in adjudicative proceedings. Judicial review
20 of such proceedings of the shorelines hearings board is governed by
21 chapter 34.05 RCW. The board shall issue its decision on the appeal
22 authorized under subsections (1) and (2) of this section within one
23 hundred eighty days after the date the petition is filed with the board
24 or a petition to intervene is filed by the department or the attorney
25 general, whichever is later. The time period may be extended by the
26 board for a period of thirty days upon a showing of good cause or may
27 be waived by the parties.

28 (4) Any person may appeal any rules, regulations, or guidelines
29 adopted or approved by the department within thirty days of the date of
30 the adoption or approval. The board shall make a final decision within
31 sixty days following the hearing held thereon.

32 (5) The board shall find the rule, regulation, or guideline to be
33 valid and enter a final decision to that effect unless it determines
34 that the rule, regulation, or guideline:

35 (a) Is clearly erroneous in light of the policy of this chapter; or

36 (b) Constitutes an implementation of this chapter in violation of
37 constitutional or statutory provisions; or

38 (c) Is arbitrary and capricious; or

1 (d) Was developed without fully considering and evaluating all
2 material submitted to the department during public review and comment;
3 or

4 (e) Was not adopted in accordance with required procedures.

5 (6) If the board makes a determination under subsection (5)(a)
6 through (e) of this section, it shall enter a final decision declaring
7 the rule, regulation, or guideline invalid, remanding the rule,
8 regulation, or guideline to the department with a statement of the
9 reasons in support of the determination, and directing the department
10 to adopt, after a thorough consultation with the affected local
11 government and any other interested party, a new rule, regulation, or
12 guideline consistent with the board's decision.

13 (7) A decision of the board on the validity of a rule, regulation,
14 or guideline shall be subject to review in superior court, if
15 authorized pursuant to chapter 34.05 RCW. A petition for review of the
16 decision of the shorelines hearings board on a rule, regulation, or
17 guideline shall be filed within thirty days after the date of final
18 decision by the shorelines hearings board.

19 **Sec. 5.** RCW 90.58.190 and 2010 c 211 s 14 and 2010 c 210 s 38 are
20 each reenacted and amended to read as follows:

21 (1) The appeal of the department's decision to adopt a master
22 program or amendment pursuant to RCW 90.58.070(2) or 90.58.090(5) is
23 governed by RCW 34.05.510 through 34.05.598.

24 (2)(a) The department's final decision to approve or reject a
25 proposed master program or master program amendment by a local
26 government planning under RCW 36.70A.040 shall be appealed to the
27 growth management hearings board by filing a petition (~~((within sixty
28 days from the date of the department's written notice to the local
29 government of the department's final decision to approve or reject a
30 proposed master program or master program amendment,))~~ as provided in
31 RCW 36.70A.290. ~~((The department's written notice must conspicuously
32 and plainly state that it is the department's final decision and that
33 there will be no further modifications under RCW 90.58.090(2).))~~)

34 (b) If the appeal to the growth management hearings board concerns
35 shorelines, the growth management hearings board shall review the
36 proposed master program or amendment solely for compliance with the
37 requirements of this chapter, the policy of RCW 90.58.020 and the

1 applicable guidelines, the internal consistency provisions of RCW
2 36.70A.070, 36.70A.040(4), 35.63.125, and 35A.63.105, and chapter
3 43.21C RCW as it relates to the adoption of master programs and
4 amendments under chapter 90.58 RCW.

5 (c) If the appeal to the growth management hearings board concerns
6 a shoreline of statewide significance, the board shall uphold the
7 decision by the department unless the board, by clear and convincing
8 evidence, determines that the decision of the department is
9 inconsistent with the policy of RCW 90.58.020 and the applicable
10 guidelines.

11 (d) The appellant has the burden of proof in all appeals to the
12 growth management hearings board under this subsection.

13 (e) Any party aggrieved by a final decision of the growth
14 management hearings board under this subsection may appeal the decision
15 to superior court as provided in RCW 36.70A.300.

16 (3)(a) The department's final decision to approve or reject a
17 proposed master program or master program amendment by a local
18 government not planning under RCW 36.70A.040 shall be appealed to the
19 shorelines hearings board by filing a petition within thirty days of
20 the date ~~((of the department's written notice to the local government~~
21 ~~of the department's final decision to approve or reject a proposed~~
22 ~~master program or master program amendment. The department's written~~
23 ~~notice must conspicuously and plainly state that it is the department's~~
24 ~~final decision and that there will be no further modifications under~~
25 ~~RCW 90.58.090(2))~~ that the department publishes notice of its final
26 decision under RCW 90.58.090(8).

27 (b) In an appeal relating to shorelines, the shorelines hearings
28 board shall review the proposed master program or master program
29 amendment and, after full consideration of the presentations of the
30 local government and the department, shall determine the validity of
31 the local government's master program or amendment in light of the
32 policy of RCW 90.58.020 and the applicable guidelines.

33 (c) In an appeal relating to shorelines of statewide significance,
34 the shorelines hearings board shall uphold the decision by the
35 department unless the board determines, by clear and convincing
36 evidence that the decision of the department is inconsistent with the
37 policy of RCW 90.58.020 and the applicable guidelines.

1 (d) Review by the shorelines hearings board shall be considered an
2 adjudicative proceeding under chapter 34.05 RCW, the administrative
3 procedure act. The aggrieved local government shall have the burden of
4 proof in all such reviews.

5 (e) Whenever possible, the review by the shorelines hearings board
6 shall be heard within the county where the land subject to the proposed
7 master program or master program amendment is primarily located. The
8 department and any local government aggrieved by a final decision of
9 the hearings board may appeal the decision to superior court as
10 provided in chapter 34.05 RCW.

11 (4) A master program amendment shall become effective after the
12 approval of the department or after the decision of the shorelines
13 hearings board to uphold the master program or master program
14 amendment, provided that the board may remand the master program or
15 master program adjustment to the local government or the department for
16 modification prior to the final adoption of the master program or
17 master program amendment.

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